

Message Text

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PAGE 01 STUTTG 01007 242022Z
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USCINCEUR AND CINCUSAREUR FOR POLADS

E.O. 11652: N/A
TAGS: PINT GW
SUBJECT: VERDICT IN FILBINGER LAWSUIT

REF: STUTTGART 0997

1. SUMMARY. STUTTGART COURT ON MAY 23 HANDED DOWN ITS
DECISION IN FILBINGER CASE, ENJOINING HOCHHUTH FROM SPEAKING
OF A "CONSPIRACY OF SILENCE" TO PROTECT FILBINGER BUT LETTING
STAND HOCHHUTH'S STATEMENT OF THE FACTS AND OPINIONS EXPRESSED
ON THE ROLE FILBINGER PLAYED. COURT THEN WENT ON TO REVIEW
FILBINGER'S ROLE AS JUDGE IN THE GROEGER AND PETZOLD CASES AND
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PAGE 02 STUTTG 01007 242022Z

FOUND HIM WANTING. OUR INITIAL REACTION IS THAT COURT DECISION
WILL HURT MORE THAN HELP FILBINGER, AND HE MAY COME TO RUE THE
DAY HE DECIDED TO GO TO COURT. END SUMMARY.

2. THE VERDICT WAS HANDED DOWN IN STUTTGART AS SCHEDULED ON
MAY 23 IN THE FILBINGER LAWSUIT, BUT IT WAS A MIXED RULING THAT
GAVE SOMETHING TO EACH OF THE PARTIES. AUTHOR ROLF HOCHHUTH WAS

ENJOINED BY THE COURT FROM PUBLISHING THE CHARGE THAT FILBINGER HAD BEEN PROTECTED DOWN THROUGH THE YEARS BY A CONSPIRACY OF SILENCE SURROUNDING HIS ACTIONS AS A TRIAL JUDGE WHILE IN UNIFORM AT THE END OF THE WAR. HOWEVER, THE COURT REFUSED TO ENJOIN HOCHHUTH FROM PUBLISHING THE FACTUAL ACCOUNT OF FILBINGER'S ACTIONS OR FROM EXPRESSING AN OPINION ON WHETHER FILBINGER HAD BEEN, FOR EXAMPLE, A GOOD OR A BAD TRIAL JUDGE.

3. IN WEIGHING ITS VERDICT THE COURT ITSELF DELVED INTO THE FACTUAL BACKGROUND, HOWEVER, AND ISSUED SOME JUDGEMENTS OF ITS OWN ON WHETHER JUSTICE HAD INDEED BEEN DONE BY JUDGE FILBINGER. THE TWO CASES THAT WERE AT ISSUE WERE THE DEATH SENTENCE AND EXECUTION OF SAILOR WALTER GROEGER AND THE LATER SENTENCE IN A POW CAMP OF KURT PETZOLD FOR "INSUBORDINATION." THE COURT FOUND THAT IN NEITHER CASE HAD JUSTICE BEEN PERVERTED, FOR IN BOTH CASES THE FINDING OF GUILT AND THE PUNISHMENT DECREED WERE IN ACCORDANCE WITH APPLICABLE REGULATIONS.

4. VIEWED AGAINST TODAY'S STANDARDS, HOWEVER, SAID THE COURT, THE SENTENCE IN THE PETZOLD CASE SEEMS "STRANGE" -- NOT STRANGE BECAUSE GERMAN MILITARY JUSTICE WAS METED OUT EVEN AFTER THE END OF THE WAR BUT BECAUSE OF "THE DEGREE OF PUNISHMENT AND THE REASONS FOR THE SENTENCE." (PETZOLD WAS CHARGED WITH "INSUBORDINATION" FOR RIPPING NAZI INSIGNIA OFF HIS UNIFORM WHILE A POW.) THE STUTTGART COURT THUS EXPRESSED THE OPINION THAT PETZOLD'S PUNISHMENT HAD BEEN EXCESSIVE AND THAT AT THE TIME -- LIMITED OFFICIAL USE

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PAGE 03 STUTTG 01007 242022Z

THREE WEEKS AFTER THE END OF THE WAR -- FILBINGER "HAD NOT DONE WHAT COULD HAVE BEEN EXPECTED OF HIM, NAMELY, TO RETHINK." IT WAS THE OPINION OF THE COURT THAT IN THE GROEGER CASE FILBINGER DID HAVE THE OPTION, WHICH HE DID NOT EXERCISE, OF OPPOSING INSTRUCTIONS TO ASK FOR THE DEATH PENALTY. FOR THAT REASON, SAID THE COURT, HOCHHUTH IS QUITE JUSTIFIED IN ASKING WHY NOTHING WAS DONE TO SAVE GROEGER'S LIFE.

5. THE STUTTGART PRESS REPORTS EXTENSIVELY ON THE COURT'S DECISION, BUT DEADLINES APPEAR TO HAVE FORESTALLED MUCH SUBSTANTIVE COMMENT. THAT WILL COME LATER.

6. COMMENT. THOUGH WE HAVE ONLY PRESS REPORTS TO GO ON THUS FAR, IT LOOKS TO US AS IF THE COURT'S DECISION HURTS FILBINGER MORE THAN IT HELPS HIM. THE ALLEGED EXISTENCE OF "A CONSPIRACY OF SILENCE" WAS HARDLY THE MOST DAMAGING FOR FILBINGER OF HOCHHUTH'S ASSERTIONS (ANYWAY, PETZOLD HAD NO REASON TO REMAIN SILENT ALL THESE YEARS AND RECENTLY HE HAS BEEN INTERVIEWED ON TV); RATHER, IT WAS SIMPLY THE SURFACING BY HOCHHUTH OF THE FACTS THAT HAVE COME TO HAUNT FILBINGER, AND SINCE THE COURT CANNOT CHANGE HISTORY IT HAS OF COURSE LET THE FACTS STAND AND WILL NOT BLOCK THEIR PUBLICATION. AT THE SAME TIME, BY ITSELF GOING BEYOND THE FACTS

AND CONTRIBUTING ITS OWN INTERPRETATIVE JUDGEMENTS OF THE
PROPRIETY OF FILBINGER'S EARLIER ACTIONS, THE COURT WOULD SEEM,
IN A SENSE, TO HAVE VINDICATED HOCHHUTH BY ALSO QUESTIONING,
THOUGH IN MORE POLITE LANGUAGE THAN HOCHHUTH MAY HAVE USED, THE
WISDOM FILBINGER DISPLAYED IN HANDLING THE GROEGER AND PETZOLD
CASES. THE MINISTER-PRESIDENT, EX-NACY JUDGE, HAS BEEN TRIED BY
HIS LATTER DAY PEERS ON THE BENCH AND APPEARS TO HAVE BEEN FOUND
WANTING. FILBINGER MAY WELL COME TO RUE THE DAY HE DECIDED TO
GO TO COURT.MILLER

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